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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of ARTHUR
and POLINA TSATRYAN.

B270784, B276299

ARTHUR TSATRYAN,

(Los Angeles County
Super. Ct. No. BD512645)

Appellant,

v.

POLINA TSATRYAN,

Respondent.

APPEALS from orders of the Superior Court of Los Angeles
County, Mark A. Juhas and Shelley Kaufman, Judges. Affirmed.

Arthur Tsatryan, in pro. per., for Appellant.

No appearance for Respondent.

INTRODUCTION

These are the seventh and eighth appeals by Arthur Tsatryan¹ in this marital dissolution action. On May 21, 2015 the trial court entered a judgment of dissolution of Arthur and Polina's marriage. In the judgment, the trial court found the parties' former residence, known as the Santa Clarita property, was community property. The judgment provided that the property was to be sold and the proceeds divided evenly, subject to the equalization payments set forth elsewhere in the judgment. We affirmed the judgment. (*In re Marriage of Tsatryan* (Feb. 13, 2018, B265467) [nonpub. opn.].)

Arthur now appeals from two postjudgment orders. The first is an order awarding the Santa Clarita property to Polina and ordering Arthur to pay attorney's fees based on his breach of fiduciary duty and failure to disclose his encumbrances on the property (B270784). The second is an order denying his request to quash a writ of possession (B276299).

We affirm.

¹ As with our previous opinions in this matter, we refer to Arthur and Polina Tsatryan by their first names for the sake of convenience and clarity, intending no disrespect.

FACTUAL AND PROCEDURAL BACKGROUND²

A. *Background*

Arthur and Polina were married on August 5, 1987. They separated on August 3, 2009, and Arthur filed a petition for dissolution of marriage on September 23, 2009. (*In re Marriage of Tsatryan, supra*, B265467.)

Following a February 2, 2015 trial on custody issues, the trial court granted Polina sole legal and physical custody of the parties' minor son, Alexander, with a visitation schedule for Arthur. (*In re Marriage of Tsatryan, supra*, B262680.) The trial continued on April 2 and 3, 2015 with respect to division of the parties' property, child and spousal support, and other reserved issues. On May 21, 2015 the trial court issued its ruling and entered a judgment of dissolution. The trial court ordered Arthur to pay child support and denied Arthur's request for spousal support. The trial court found the parties' Santa Clarita property was community property and ordered the property be sold and the proceeds divided evenly, subject to equalization payments. The trial court also awarded Polina attorney's fees. Arthur again appealed, and we affirmed. (*In re Marriage of Tsatryan, supra*, B265467.)

² In our discussion of the factual and procedural background of the case, we focus on the proceedings relevant to this appeal. We discuss the earlier proceedings leading up to the judgment of dissolution in *In re Marriage of Tsatryan* (Nov. 9, 2016, B262680) (nonpub. opn.).

B. *The Trial Court's Order Awarding the Santa Clarita Property to Polina and Ordering Arthur To Pay Attorney's Fees (B270784)*

1. *Polina's ex parte request for an order*

On August 26, 2015 Polina filed an ex parte request for an order shortening time on her request to have the court clerk execute on behalf of Arthur the listing agreement documents required for sale of the Santa Clarita property. As part of the requested relief, Polina sought an order requiring Arthur to vacate the property and give her exclusive possession so she could prepare the property for sale, as well as an order that Arthur pay \$15,000 in attorney's fees to be paid from the proceeds of the sale due to his refusal to sign the listing agreement documents.

In support of her request, Polina submitted declarations of court-appointed real estate agent Brian Melville and her attorney, Steven Fernandez, documenting Arthur's interference with Melville's efforts to sell the property.

The trial court denied Polina's request for an ex parte order, but later ruled it would consider the request in conjunction with her request for an order partially vacating the judgment.

2. *Polina's request for order partially vacating the judgment*

On September 24, 2015 Polina filed a request for an order partially vacating the judgment of dissolution as to equal division of the equity in the Santa Clarita property. Polina also requested the trial court order Arthur to pay \$50,000 in attorney's fees and costs as sanctions pursuant to Family Code sections 271,

subdivision (a), and 2107, subdivision (c).³ The trial court set the hearing for November 3, 2015.

In support of her request, Polina submitted Fernandez's declaration documenting Arthur's "secret[]" encumbrances on the Santa Clarita property in the amount of \$583,000. Fernandez listed seven liens placed on the property on February 11 and 12, 2015, during the trial about division of the Santa Clarita property, and attached copies of the deeds of trust. Fernandez asserted Arthur violated the automatic temporary restraining order by failing to obtain approval from the court or Polina for the encumbrances, and failed to disclose the encumbrances on his final declaration of disclosure or other disclosures filed with the court.

Arthur filed a notice of intent to take oral testimony at the November 3, 2015 hearing. He sought to present testimony from Melville, Fernandez, Polina, and himself. Arthur also filed a responsive declaration, in which he disputed he secretly encumbered the Santa Clarita property.

3. *The November 3, 2015 hearing*

At the November 3, 2015 hearing on Polina's requests,⁴ including her ex parte request and her request for an order partially vacating the judgment, Arthur questioned Melville regarding the statement in his declaration that Arthur had interfered with the sale of the property. Melville testified Arthur was initially cooperative in setting up an inspection of the house,

³ Further undesignated references are to the Family Code.

⁴ Judge Mark A. Juhas presided over the November 3, 2015 hearing and signed the January 26, 2016 order.

but only “up until the time [Melville] got to the house.” Specifically, Arthur would not allow Melville’s female business partner into the home for the inspection. Sometime after the inspection, Arthur came to the lobby of Melville’s office and videotaped Melville while Arthur stated he was suing him for defamation. Melville never received a signed copy of the listing agreement.

Arthur then called Fernandez as a witness. However, the trial court sustained objections to questions about extraneous matters for the sole purpose of impeaching Fernandez’s credibility. The trial court denied Arthur’s request to examine Polina, finding she had no information or knowledge that would be useful to the court.

Fernandez noted the property was appraised at the time of trial at \$695,000, but it now was encumbered with \$650,000 in liens.⁵ In addition, \$130,000 was owed on the note secured by the first trust deed. In response to the trial court’s inquiry as to Arthur’s disclosure of the liens, Arthur directed the court to his income and expense declaration showing “loans from family and friends, [in the amount of] \$650,000.” Arthur stated this was his only disclosure of the liens.

At the conclusion of the hearing, the trial court explained that the family law restraining orders precluded Arthur from “[t]ransferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate[,] without the written

⁵ The record does not reflect the basis of the \$650,000 estimate of current liens. As noted above, Polina’s request documented \$583,000 in liens. The difference is not material to this appeal.

consent of the other party or an order of the court, except in the usual course of business or for the necessities of life.” The court found that “[e]ncumbering the principal residence in the amount of, roughly, \$600,000 is not in the normal course of his business . . . [nor] for necessities of life.” Rather, it “seems a lot like he’s simply siphoning off what equity is in the house” in “clear violation” of the restraining orders.

The trial court further noted that although it did not have Arthur’s income and expense declaration in front of it, even if Arthur disclosed the loans on his declaration, he did not disclose the liens. The court explained it was Arthur’s burden to show the liens were disclosed on the declaration, which he had not met. Further, Arthur failed to provide a copy of a note supporting the loans, a loan repayment plan, or any evidence he received the money.

The trial court found, “[T]his is a pretty egregious breach of fiduciary duty. During the trial, to go out and encumber the primary asset, which is being discussed and disputed, and encumber it virtually . . . the entire equity in the property, and not disclose that, . . . [¶] . . . not advise the other side what you’re doing, not seek court permission, [and] not file the documents in a timely way.”

The trial court concluded Arthur’s encumbrance of the Santa Clarita property was “malicious. It was intended to harm [Polina]. It was despicable, because it was carried on with [a] willful and conscious disregard of her rights. It was oppressive, because it subjects her to an unjust hardship in conscious disregard [of] her rights, and it’s a fraud. . . . [¶] Without disclosing, he intentionally encumbered this house knowing

that . . . if he would not prevail, then he would find himself in a position where he made this asset virtually worthless.”

The trial court awarded 100 percent of the Santa Clarita property to Polina, with exclusive use and possession, plus “the sum of \$65,000, \$50,000 of which is *Feldman*-type sanctions,^[6] because of the egregious nature of the breach [of fiduciary duty].” The trial court found clear and convincing evidence supported the award of attorney’s fees as a form of punitive damages under Civil Code section 3294, finding “this is going to be an expensive trail to untangle and is going to require further litigation and may, indeed require . . . bringing these people in as parties.” In order to effectuate its order, the trial court ordered Arthur to execute an interspousal transfer deed. In response to Arthur’s stated objection that Polina never requested he execute a transfer deed, the trial court explained it was “the only way to effectuate this order.”

4. *The trial court’s order on Polina’s requests*

The trial court filed its order after hearing on January 26, 2016. It listed the seven deeds of trust encumbering the Santa Clarita property, dated February 11 and 12, 2015. The order found Arthur’s conduct in encumbering the property for approximately \$600,000 violated the standard family law

⁶ The court in *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470 (*Feldman*) concluded a trial court may award attorney’s fees and costs as a sanction under sections 271 and 2107, subdivision (c), for a party’s breach of fiduciary duty based on the party’s failure to make required disclosures in the preliminary and final declarations of disclosure. (*Feldman*, at pp. 1477-1478 & fn. 6.)

restraining orders because the encumbrances were not imposed “in the usual course of business” or “for the necessities of life.” The trial court found by clear and convincing evidence that Arthur’s “egregious” breach of fiduciary duty constituted malice, oppression, or fraud under Civil Code section 3294.

The trial court found Arthur did not meet his burden of providing the court with a “full and complete FL-150 [income and expense declaration] of February 27, 2015.” The trial court also found the encumbering deeds had “no corresponding promissory notes and no loan repayment terms.” Further, “[t]here is no evidence that [Arthur] received the funds from these Encumbering Deeds. As a result the Court cannot tell whether the Encumbering Deeds were actual loans from which [Arthur] received money because the Court has no evidence as to where the funds went.”

Based on these findings, the trial court awarded Polina 100 percent of the Santa Clarita property under section 1101, subdivision (h), including “the exclusive use and possession” of the property. It ordered Arthur to execute an interspousal transfer deed transferring his entire interest in the property to Polina as her sole and separate property.

The trial court ordered Arthur to pay to Polina’s attorneys “as and for attorney’s fees and sanctions the sum of \$65,000 (\$50,000 of which are *Feldman*-type sanctions), because of the egregious nature of the breach,” citing to sections 271, subdivision (a), 1101, subdivision (h), and 2107, subdivision (c).

Finally, the court retained jurisdiction over the Santa Clarita property, execution of the interspousal transfer deed, and all issues related to the encumbering deeds.

Arthur timely appealed.

C. *Arthur's Request To Quash the Writ of Possession (B276299)*

On May 10, 2016 the court clerk issued a writ of possession for the Santa Clarita property based on the trial court's January 26, 2016 order granting Polina exclusive use and possession of the property. According to Fernandez, Arthur failed to leave the property or pay the mortgage, resulting in arrears of approximately \$50,000.⁷

On May 26, 2016 Arthur filed an ex parte application to quash the writ of possession, arguing Polina had failed to follow the unlawful detainer procedure to evict him from the property. Polina opposed Arthur's request by filing a responsive declaration from Fernandez and a memorandum of points and authorities. Polina also requested sanctions in the amount of \$10,000 under section 271 for Arthur's uncooperative conduct under *Feldman*.

On May 31, 2016 Arthur filed an "opposing declaration" and request for an order striking Fernandez's declaration. He also filed a notice of nonopposition to his request, asserting that Fernandez's declaration filed on behalf of Polina should be stricken because he was not a party to the case.

The trial court⁸ stayed the writ of possession until the matter could be heard on May 31, 2016. At the hearing on May 31, Arthur argued issuance of the writ of possession violated the double jeopardy cause and his rights to due process and a fair trial, noting that Judge Juhas had stated at the November 3,

⁷ On May 23, 2016 the court clerk executed the interspousal transfer deed for the Santa Clarita property on Arthur's behalf after he refused to sign the deed.

⁸ Judge Shelley Kaufman.

2015 hearing, “I cannot evict him.” Arthur added that he did not have notice of the issuance of the writ of possession.

The trial court denied Arthur’s request to strike Fernandez’s declaration, finding it was a proper response to the request. After hearing argument, the trial court denied Arthur’s request, ruling that issuance of the writ of possession was proper under section 290 to enforce the trial court’s January 26, 2016 order awarding Polina 100 percent of the Santa Clarita property, including exclusive use and possession. The court rejected Arthur’s contention Polina needed to file an unlawful detainer action, noting “[t]he unlawful detainer process is made in order to determine who has the right to possession. . . . [T]hat determination has already been made on November 3, 2015 followed up by the court’s order after hearing granting [Polina] exclusive use and possession of the property.” Additionally, “[n]otice to vacate and a writ and claim of possession were attached to the door pursuant to the code and then mailed to [Arthur] pursuant to the code. [¶] [Arthur] acknowledged receiving in the mail the notice a couple days before the ex parte hearing on May 26th.”

Arthur timely appealed.⁹

⁹ On November 7, 2016 the trial court relieved Fernandez as Polina’s counsel. Since that date Arthur has served Polina, who has not appeared in these appeals.

DISCUSSION

A. *General Principles of Appellate Review*

As we stated with respect to Arthur’s fifth appeal, “the most fundamental rule of appellate law is that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant’s burden to affirmatively demonstrate error.” (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) As the appellant, Arthur has the burden to demonstrate he was prejudiced by the error “and that a different result would have been probable if such error . . . had not occurred or existed.” (Code Civ. Proc., § 475; see *Linton v. DeSoto Cab Co., Inc.* (2017) 15 Cal.App.5th 1208, 1224 [“Plaintiff has the burden of affirmatively demonstrating prejudice, that is, that the errors have resulted in a miscarriage of justice.”]; *Sabato v. Brooks* (2015) 242 Cal.App.4th 715, 724-725 [“Reversal is justified ‘only when the court, ‘after an examination of the entire cause, including the evidence,’ is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818, 836; [citation].)”).]

“To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]’ [Citation.] ‘Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.’ [Citation.] ‘Hence, conclusory claims of error will fail.” (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; accord, *Rojas v.*

Platinum Auto Group, Inc. (2013) 212 Cal.App.4th 997, 1000, fn. 3.)

As we have previously stated, we recognize that a party who is representing himself has a more limited understanding of the rules on appeal than an experienced appellate attorney. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives a party of a hearing. However, “mere self-representation is not a ground for exceptionally lenient treatment.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.)

B. *Polina’s Request for an Order Partially Vacating the Judgment (B270784)*

Although most of Arthur’s challenges are conclusory without citation to the law or record, we address his principal contentions,¹⁰ including: (1) whether Polina placed Arthur on

¹⁰ We do not address Arthur’s contention that Polina conspired with court officers and the realtors. He cites a number of authorities addressing both civil and criminal conspiracy. However, Arthur did not raise a conspiracy issue in the trial court, and it is not before us on appeal. Arthur also asserts Judge Kaufman improperly signed an order granting Polina’s ex parte application on August 27, 2015. However, the record reflects to the contrary that Judge Kaufman denied the ex parte application on that date, and instead considered Polina’s request at the hearing on November 3, 2015. Arthur has not provided any documents in the appellate record to the contrary.

Arthur also contends Polina failed to serve him with the proposed order after hearing filed on January 26, 2016, as required by California Rules of Court, rule 5.125(b)(1). Although the final order was served on Arthur, the record does not reflect whether the proposed order was served on him. However, even if

notice of her request that the trial court award her 100 percent of the Santa Clarita property; (2) whether substantial evidence supports the trial court's order awarding Polina 100 percent of the Santa Clarita property, requiring Arthur to sign the document transferring the deed of trust to Polina, and awarding \$65,000 in attorney's fees as sanctions; (3) whether the trial court erred in not reviewing Arthur's complete income and expense statement; and (4) whether the trial court erred in considering the declaration and testimony of Melville.

1. *Standard of review*

"The existence and scope of a fiduciary duty is a question of law that we review de novo. [Citation.] However, 'the factual background against which we [answer that question] is a function of a particular case's procedural posture.' [Citation.] Thus, to the extent the court's decision below 'turned on the resolution of conflicts in the evidence or on factual inferences to be drawn from the evidence, we consider the evidence in the light most favorable to the trial court's ruling and review the trial court's factual determinations under the substantial evidence standard. [Citation.]' [Citation.] . . . [Citation.] We review the trier of fact's finding a breach occurred for substantial evidence, resolving all conflicts and drawing all reasonable inferences in favor of the decision." (*In re Marriage of Kamgar* (2017))

Arthur was not served with the proposed order, he has not shown prejudice from a lack of notice. (*Linton v. DeSoto Cab Co., Inc.*, *supra*, 15 Cal.App.5th at p. 1224.) Rather, the written order accurately reflects the oral rulings made at the hearing on Polina's motion to partially vacate the judgment, at which Arthur was present.

18 Cal.App.5th 136, 144; accord, *In re Marriage of Bonds* (2000) 24 Cal.4th 1, 31 [““In reviewing the evidence on . . . appeal all conflicts must be resolved in favor of the [prevailing party], and all legitimate and reasonable inferences indulged in [order] to uphold the [finding] if possible.””]; *In re Marriage of Rossi* (2001) 90 Cal.App.4th 34, 40 (*Rossi*) [“We review factual findings of the family court for substantial evidence, examining the evidence in the light most favorable to the prevailing party.”].) ““Substantial evidence” is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.” (*Estate of O’Connor* (2017) 16 Cal.App.5th 159, 163; accord, *In re Marriage of Burwell* (2013) 221 Cal.App.4th 1, 24-25, fn. 21.)

“Because Civil Code section 3294 requires proof by ‘clear and convincing evidence’ of fraud, oppression, or malice, we must inquire whether the record contains “substantial evidence to support a determination by clear and convincing evidence”” (*Rossi, supra*, 90 Cal.App.4th at p. 40; accord, *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 891 [“a jury award of punitive damages must be upheld if . . . the record contains ‘substantial evidence to support a determination by clear and convincing evidence’” (citations omitted)]; see *In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 603-604 [substantial evidence supported award of entire proceeds from sale of family home to wife under § 1101, subd. (h), because of husband’s fraud].)

On appeal we review a trial court’s imposition of sanctions under sections 271 and 2107 for an abuse of discretion. (*Feldman, supra*, 153 Cal.App.4th at p. 1478; see *In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532 [reviewing sanction order under §§ 271, 2030].) ““[T]he trial court’s order will be

overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order.”” (Feldman, at p. 1478; accord, *In re Marriage of Smith*, at p. 532.) We review questions of law de novo and findings of fact forming the basis for the sanctions award under a substantial evidence standard of review. (*In re Marriage of Smith*, at p. 532; *Feldman*, at p. 1478.)

2. *Polina gave Arthur notice of her request that the trial court award her 100 percent of the Santa Clarita property*

Arthur contends his right to due process was violated by the award of 100 percent of the property to Polina because Polina’s request to partially vacate the judgment did not seek this relief. We disagree.

““It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. (U.S. Const., [Amend.] XIV)” [Citation.] . . . [A] dissolution court cannot grant unrequested relief against a party who appears without affording that party notice and an opportunity to respond. [Citations.] Due process requires affording a litigant a reasonable opportunity, by continuance or otherwise, to respond to evidence or argument that is new, surprising, and relevant.” (*In re Marriage of Siegel* (2015) 239 Cal.App.4th 944, 953-954.)

In her request Polina informed Arthur she was seeking to have the court “partially vacate the judgment in regards to the [Santa Clarita] property that the equity should be divided equally” and order Arthur to pay \$50,000 in attorney’s fees and costs pursuant to sections 271, subdivision (a), and 2107,

subdivision (c), and *Feldman*. Polina had previously requested \$15,000 in attorney's fees in her August 26, 2015 ex parte application.

Fernandez made clear Polina's request was based on Arthur's violation of the automatic restraining orders "by secretly encumbering all of the equity" in the Santa Clarita property by recording the seven deeds without disclosure to Polina or the court. In her memorandum of points and authorities, Polina sought relief for Arthur's breach of fiduciary duty under section 1101, subdivision (h), and Civil Code section 3294, including "an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty." (Boldface omitted.) The memorandum added, "Here, one hundred percent of Arthur's community property interest in the [Santa Clarita] property's equity that he attempted to transfer in breach of his fiduciary duty should be awarded to [Polina]. Exemplary damages are attainable; he acted with intent to defraud the community by masking interests affecting the community asset. . . . Emphasis should be placed on Arthur's knowledge of [the restraining orders] and his conscious violation—conduct evidencing intentional injury to [Polina] that is despicable, with willful and conscious disregard of [Polina's] community property rights."

Polina's pleadings therefore placed Arthur on notice that Polina was requesting the court award her 100 percent of the Santa Clarita property pursuant to section 1101, subdivision (h), and Civil Code section 3294. There was no due process violation because Arthur had an opportunity to respond, both in his opposition to Polina's request and at the hearing. (*In re Marriage of Siegel*, *supra*, 239 Cal.App.4th at pp. 953-954.)

3. *Substantial evidence supports the trial court's order granting Polina 100 percent of the Santa Clarita property, ordering Arthur to transfer the deed to Polina, and awarding \$65,000 in sanctions*

Arthur contends the trial court erred in granting Polina 100 percent of the Santa Clarita property, ordering Arthur to sign the interspousal transfer deed to transfer the property to Polina, and awarding Polina \$65,000 in sanctions. We disagree.

Section 721, subdivision (b), imposes a fiduciary duty on spouses “of the highest good faith and fair dealing . . . and neither shall take any unfair advantage of the other.” Section 1101, subdivision (h), provides further that “when the breach [of fiduciary duty] falls within the ambit of Section 3294 of the Civil Code[, the remedy] shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.” (See *Rossi, supra*, 90 Cal.App.4th at p. 40; accord, *In re Marriage of Simmons* (2013) 215 Cal.App.4th 584, 593-594 (*Simmons*).)

As the court in *Simmons* explained, “a fundamental principle of family law, including during dissolution proceedings, is that each spouse has a one-half interest in community property. [Citation.] The fiduciary duty with respect to marital property is designed, among other things, to preserve that one-half interest. [Citation.] Through the enactment of the section 1101 value-of-the-asset remedy, the Legislature has in effect altered the one-half interest community property formula in the event a spouse violates his or her duty to preserve the other spouse’s one-half right to the property, by awarding the aggrieved

spouse *more* than his or her one-half interest.” (*Simmons, supra*, 215 Cal.App.4th at pp. 593–594; see *In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 347 & 348, fn. 7 [award of entire asset and attorney’s fees under §1101, subds. (g), (h), mandatory where wife breached fiduciary duty to husband by charging \$24,000 to a credit card without disclosing the debt to husband]; *Rossi, supra*, 90 Cal.App.4th at p. 40 [upholding award under § 1101, subd. (h), to husband of 100 percent of lottery proceeds wife had concealed during dissolution].)

A spouse’s breach of fiduciary duty falls within the ambit of Civil Code section 3294, subdivision (a), “where it is proven by clear and convincing evidence that the [spouse] has been guilty of oppression, fraud, or malice” (See *Rossi, supra*, 90 Cal.App.4th at p. 41.) Pursuant to Civil Code section 3294, subdivision (c), “(1) ‘Malice’ means conduct which is intended by the [spouse] to cause injury to the [other spouse] or despicable conduct which is carried on by the [spouse] with a willful and conscious disregard of the rights or safety of others. [¶] (2) ‘Oppression’ means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights. [¶] (3) ‘Fraud’ means an intentional misrepresentation, deceit, or concealment of a material fact known to the [spouse] with the intention on the part of the [spouse] of thereby depriving a person of property or legal rights or otherwise causing injury.”

Substantial evidence supports the trial court’s finding that Arthur’s recording of the encumbering deeds of trust on the property in an amount almost equal to the value of the property, without disclosing his actions to Polina, constituted a breach of his fiduciary duty. When asked at the hearing to show where he disclosed the encumbering deeds of trust, Arthur could only point

to his income and expense declaration, which disclosed the loans, not the encumbrances.

Moreover, as the trial court found by clear and convincing evidence, Arthur acted with malice, oppression, and fraud. Arthur encumbered the Santa Clarita property with seven deeds of trust over a two-day period during the trial over the disposition of the property, in contravention of the automatic restraining orders and his duty to disclose. By encumbering the property, Arthur made the Santa Clarita property “virtually worthless,” so that if Polina prevailed at trial and was awarded her one-half share of the community property, she would obtain nothing.

Because the trial court properly entered an order awarding Polina 100 percent of the Santa Clarita property, it had jurisdiction to enforce the order by requiring Arthur to sign an interspousal transfer deed to transfer the property to her. (See § 290 [“A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.”]; see also Code Civ. Proc., § 128, subd. (a) [“Every court shall have the power to do all of the following: [¶] . . . [¶] (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.”]; *Severdia v. Alaimo* (1974) 41 Cal.App.3d 881, 889 [trial court had jurisdiction under predecessor statute to § 290 to order wife’s attorney to transfer proceeds from sale of community property in his possession to wife in order to enforce judgment awarding share of proceeds to wife].)

Further, the trial court did not abuse its discretion in awarding Polina \$65,000 in attorney’s fees pursuant to sections

271, 1101, and 2107, subdivision (c), for Arthur's "egregious" breach of fiduciary duty.¹¹ Indeed, under section 1101, subdivision (g), an award of attorney's fees for a spouse's breach of fiduciary duty is mandatory. (*In re Marriage of Fossum, supra*, 192 Cal.App.4th at p. 348 ["Once a breach is shown, the trial court lacks discretion to deny an aggrieved spouse's request for attorney fees."].) Section 1101, subdivision (g), provides that remedies for a spouse's breach of fiduciary duty "shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs."

Here, the sanctions award of \$65,000 is far less than 50 percent of the \$650,000 in encumbrances (the value of the asset "transferred"). In addition, as the trial court found, "this is going to be an expensive trail to untangle and is going to require further litigation and may, indeed require . . . bringing these people in as parties."

The trial court's award of sanctions was also proper under sections 271 and 2107. (See §§ 271 [providing for award of attorney's fees as sanction where conduct of party "frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys"], 2107, subd. (c)

¹¹ Arthur contends the award of attorney's fees and sanctions was improperly based on Arthur's refusal to execute the listing agreement documents. However, the trial court's order made clear the award of attorney's fees was based on Arthur's breach of fiduciary duty by encumbering the property.

[providing for monetary sanctions, including attorney's fees, for failure to make required disclosures in declaration of disclosure].)

4. *Arthur's other contentions lack merit*

Arthur contends the trial court failed to consider his complete income and expense declaration, which he claimed showed he had disclosed the encumbrances on the Santa Clarita property. During the hearing the trial court asked Arthur to state which document he was relying on to show he had disclosed the liens against the property. In response, Arthur directed the court to his income and expense declaration, which he represented showed a \$650,000 debt incurred as a result of loans from family and friends. The trial court noted it did not have the income and expense declaration in front of it, but that Arthur had only disclosed the loans on his declaration, not the liens. Arthur did not state otherwise. Neither has he included in the record a copy of his income and expense declaration showing he disclosed the liens in his declaration. Thus, Arthur has not "affirmatively demonstrate[d] error." (*Ruelas v. Superior Court, supra*, 235 Cal.App.4th at p. 383; accord, *In re Marriage of Arceneaux, supra*, 51 Cal.3d at p. 1133.)

In addition, as the trial court noted, Arthur failed to provide a copy of any note supporting the loans, a loan repayment plan, or any evidence he received the money. Thus, even if the trial court had not reviewed Arthur's income and expense declaration, Arthur has failed to show he was prejudiced by the failure because the trial court accepted Arthur's representation that his declaration disclosed the loans from his family, instead relying on the failure to disclose the liens encumbering the property. (*Linton v. DeSoto Cab Co., Inc., supra*, 15 Cal.App.5th

at p. 1224; *Sabato v. Brooks*, *supra*, 242 Cal.App.4th at pp. 724-725.)

Arthur next asserts Melville perjured himself in his testimony and failed to support the statements in his declaration that Arthur failed to cooperate with him or sign the listing agreement documents. However, the trial court based its ruling not on Arthur's failure to cooperate with Melville, but on his encumbrances of the Santa Clarita property and his failure to disclose the liens to Polina and the court. Thus, whether Arthur cooperated with Melville is not relevant on appeal.

C. *Arthur's Request To Quash the Writ of Possession (B276299)*

Although Arthur cites to a range of legal principles, including double jeopardy,¹² perjury, and due process, Arthur's principal contention is that the court clerk had no authority to issue the writ of possession absent a judgment in an unlawful detainer proceeding. We disagree.

Arthur fails to cite to any authority for the proposition that a court may only issue a writ of possession after initiation of an unlawful detainer action. Indeed, the remedy of unlawful detainer is not available to a spouse who has been awarded exclusive use and possession of property. "Unlawful detainer actions are authorized and governed by state statute. (Code Civ.

¹² The double jeopardy clauses of the United States and California Constitutions "protect[] against a second prosecution for the same offense following an acquittal or conviction, and also protect[] against multiple punishment for the same offense." (*People v. Anderson* (2009) 47 Cal.4th 92, 103-104.) Because this is not a criminal prosecution, the constitutional protection against double jeopardy does not apply here.

Proc., § 1161 et seq.) The statutory scheme is intended and designed to provide an expeditious remedy for the recovery of possession of real property.’ [Citations.] ‘The remedy is available in only three situations: to a lessor against a lessee for unlawfully holding over or for breach of a lease; to an owner against an employee, agent, or licensee whose relationship has terminated; and to a purchaser at an execution sale, a sale by foreclosure, or a sale under a power of sale in a mortgage or deed of trust against the former owner and possessor.’” (*Taylor v. Nu Digital Marketing, Inc.* (2016) 245 Cal.App.4th 283, 288-289; see *Berry v. Society of Saint Pius X* (1999) 69 Cal.App.4th 354, 363 “[t]he statutory situations in which the remedy of unlawful detainer is available are exclusive . . .”). None of these situations is present here.

By contrast, a family law court has the power to enforce a judgment or order “by any other order as the court in its discretion determines from time to time to be necessary.” (§ 290.) Section 291, subdivision (a), provides, “A money judgment or judgment for possession or sale of property that is made or entered under this code . . . is enforceable until paid in full or otherwise satisfied.” Section 291, subdivision (g), clarifies that a “judgment” includes an order. Code of Civil Procedure section 128, subdivision (a), similarly provides: “Every court shall have the power to do all of the following: [¶] . . . [¶] (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.”

The trial court determined in its January 26, 2016 order that Polina was the 100 percent owner of the Santa Clarita property and ordered that she have exclusive use and possession

of the property. As Code of Civil Procedure section 712.010 provides, “After entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced.” The trial court’s January 26, 2016 order constituted a final “judgment for possession . . . of property,” supporting issuance of a writ of possession to Polina. While it is true section 712.010 refers to an unlawful detainer action by stating in the second sentence of the provision that “[t]he application shall include a declaration under penalty of perjury stating the daily rental value of the property as of the date the complaint for unlawful detainer was filed,” nowhere in section 712.010 does the provision limit its applicability to unlawful detainer actions. Neither has Arthur cited to any authority limiting the issuance of a writ of possession to the enforcement of a judgment issued in an unlawful detainer proceeding. “Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.” (*Multani v. Witkin & Neal, supra*, 215 Cal.App.4th at p. 1457; accord, *Rojas v. Platinum Auto Group, Inc., supra*, 212 Cal.App.4th at p. 1000, fn. 3.)

Indeed, in other contexts courts have described the family law court’s jurisdiction under section 290 broadly to include the power to order the sale of community property. (See *In re Marriage of Schenck* (1991) 228 Cal.App.3d 1474, 1484 [“The family law department also has the power to order the residence sold immediately on the open market and to divide the proceeds. . . .”]; *Bonner v. Superior Court* (1976) 63 Cal.App.3d

156, 167 [trial court “retained power to order a sale of the homesteaded community property awarded to the petitioner in order to carry out its equal division of the community assets”].) We conclude issuance of a writ of possession to effectuate an order granting exclusive use and possession to a spouse is similarly within the trial court’s authority under section 290.

DISPOSITION

The orders are affirmed. Arthur is to bear his own costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.